

EXHIBIT 44

Excerpts of Deposition of Dr.
Andrew Zimbalist

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

- - - - - x

CUNG LE, NATHAN QUARRY, JOHN FITCH,
BRANDON VERA, LUIS JAVIER VAZQUEZ,
and KYLE KINGSBURY, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

Case No.

-against- 2:15-cv-01045-RFB(PAL)

ZUFFA, LLC, d/b/a ULTIMATE FIGHTING
CHAMPIONSHIP and UFC,

Defendants.

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H I G H L Y C O N F I D E N T I A L

Videotaped oral deposition of
ANDREW ZIMBALIST, Ph.D., taken pursuant
to notice, was held at the law offices
of Cohen Millstein, 88 Pine Street, New
York, New York, commencing January 26,
2018, 10:13 a.m., on the above date,
before Leslie Fagin, a Court Reporter
and Notary Public in the State of New
York.

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MAGNA LEGAL SERVICES
320 West 37th Street, 12th Floor
New York, New York 10018
(866) 624-6221

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<p style="text-align: right;">Page 74</p> <p>1 A. Zimbalist - Confidential</p> <p>2 Q. But it sounded like you said that</p> <p>3 that was wrong because of --</p> <p>4 A. The way you presented the case is</p> <p>5 you were introducing increases in two inputs.</p> <p>6 Q. So if you are introducing increases</p> <p>7 in two inputs, then, effectively, you are not</p> <p>8 getting a measure of MRP?</p> <p>9 MR. CRAMER: Objection to form.</p> <p>10 Q. How would you get MRP in this</p> <p>11 scenario? What else would you need in the</p> <p>12 scenario I just gave to you determine MRP?</p> <p>13 MR. CRAMER: Objection to form.</p> <p>14 A. No, I didn't say you needed</p> <p>15 anything else.</p> <p>16 I'm saying, the way you formulated</p> <p>17 the question is you took two inputs and you</p> <p>18 increased them both and you told me the</p> <p>19 outcome was \$30, right?</p> <p>20 I'm saying, if you said that there</p> <p>21 was wool hanging around and there was a</p> <p>22 machine, spinning machine hanging around and</p> <p>23 hired another worker and that worker produced</p> <p>24 a value of \$30, then that worker has added</p> <p>25 \$10 of value to the production stream,</p>	<p style="text-align: right;">Page 76</p> <p>1 A. Zimbalist - Confidential</p> <p>2 world, what should the worker get in the</p> <p>3 scenario where there is wool hanging around</p> <p>4 and the worker comes in and produces \$30</p> <p>5 worth of yarn?</p> <p>6 A. \$10.</p> <p>7 Q. Why does it matter whether there is</p> <p>8 wool hanging around and the spinning machine</p> <p>9 hanging around?</p> <p>10 A. Well, you haven't increased your</p> <p>11 provision of inputs in that case.</p> <p>12 I'm saying, in terms of -- in terms</p> <p>13 of identifying what the marginal revenue</p> <p>14 product is, you have to hold all of the other</p> <p>15 inputs constant and increase the amount of</p> <p>16 labor.</p> <p>17 Q. Okay.</p> <p>18 A. Then what you did in your first</p> <p>19 example is you increased two inputs together.</p> <p>20 Q. Let's assume that before the worker</p> <p>21 comes, I had a worker that was already doing</p> <p>22 exactly the same thing.</p> <p>23 A. Okay.</p> <p>24 Q. Is that worker's MRP the same?</p> <p>25 A. I need more information. You said</p>
<p style="text-align: right;">Page 75</p> <p>1 A. Zimbalist - Confidential</p> <p>2 started with 20 and went to 30.</p> <p>3 Q. Because you already have the wool</p> <p>4 hanging around. I see.</p> <p>5 Does MRP in any way depend on</p> <p>6 whether I could hire other workers at</p> <p>7 different prices?</p> <p>8 A. So I think I need a little more</p> <p>9 from you to answer that question. You are</p> <p>10 asking -- you want to know the marginal</p> <p>11 revenue product of worker 1 and we can</p> <p>12 establish if you hire worker 1, they will</p> <p>13 produce a value of \$20 and you are asking me</p> <p>14 whether I would have a different conclusion</p> <p>15 about the MRP of worker 1 if there was a</p> <p>16 worker 2 who could add \$25.</p> <p>17 The answer is no, it doesn't depend</p> <p>18 on worker 2.</p> <p>19 Q. So let's change the scenario.</p> <p>20 Let's say that I have worker 1 who can do it</p> <p>21 for free or worker 2 who wants \$10.</p> <p>22 Does that effect MRP or how you</p> <p>23 think about MRP in any way?</p> <p>24 A. No.</p> <p>25 Q. And in a perfectly competitive</p>	<p style="text-align: right;">Page 77</p> <p>1 A. Zimbalist - Confidential</p> <p>2 doing the same thing, so you had \$20 worth of</p> <p>3 wool sitting around and you have a spinning</p> <p>4 machine --</p> <p>5 Q. Let's say --</p> <p>6 MR. CRAMER: Were you done with</p> <p>7 your answer?</p> <p>8 Q. I was trying to clarify.</p> <p>9 A. Yeah.</p> <p>10 Q. Let's say I have wool hanging</p> <p>11 around, I have a worker who takes the wool</p> <p>12 each day and turns it into yarn and then</p> <p>13 another worker, I convince another worker to</p> <p>14 come in and do the same thing.</p> <p>15 In that world, is the MRP for both</p> <p>16 workers the same?</p> <p>17 MR. CRAMER: Objection to form.</p> <p>18 You may answer, if you can.</p> <p>19 A. You are saying each worker.</p> <p>20 Normally, what you assume is if you hold</p> <p>21 these other inputs constant, as you add more</p> <p>22 workers, they have a diminishing marginal</p> <p>23 revenue product. You are saying that's not</p> <p>24 true, they both produce exactly the same,</p> <p>25 then their MRP is the same.</p>

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<p style="text-align: right;">Page 78</p> <p>1 A. Zimbalist - Confidential</p> <p>2 Q. If I was looking at MRP of labor</p> <p>3 for the firm as a whole, that should be</p> <p>4 whatever, 10 plus 10, \$20, is that right?</p> <p>5 A. If there are no diminishing returns</p> <p>6 -- the physical product is not declining and</p> <p>7 the price is staying the same, right?</p> <p>8 Q. Yeah.</p> <p>9 A. Of the output, then you would add</p> <p>10 up the combined -- add up the marginal</p> <p>11 revenue product of the 10 workers in order to</p> <p>12 know what the combined increment to value</p> <p>13 that was being produced by these 10 workers.</p> <p>14 Q. Let's go back to my question</p> <p>15 because I am bad at math. Let's say one of</p> <p>16 them now is making \$30 worth of yarn and one</p> <p>17 of them is making \$40 worth of yarn, okay, so</p> <p>18 the marginal revenue product of the first</p> <p>19 worker is -- that's making \$30 worth is</p> <p>20 making 10, is that right?</p> <p>21 A. Yes.</p> <p>22 Q. And the revenue marginal product</p> <p>23 making \$40 of worth of yarn is now 20?</p> <p>24 MR. CRAMER: Objection to form,</p> <p>25 incomplete hypothetical.</p>	<p style="text-align: right;">Page 80</p> <p>1 A. Zimbalist - Confidential</p> <p>2 and because there is a modicum of pricing</p> <p>3 power that a firm might have in an industry,</p> <p>4 that as a result of that, they also have</p> <p>5 modicum of monopsony power and because of</p> <p>6 that, the worker will not get paid his or her</p> <p>7 marginal revenue product, is that what you</p> <p>8 are saying?</p> <p>9 Q. Let's start with that question.</p> <p>10 A. So I think it's very difficult to</p> <p>11 answer. I think that it's possible for there</p> <p>12 to be a modicum of pricing power in the</p> <p>13 product market and to have very close to a</p> <p>14 competitive labor market and an outcome where</p> <p>15 workers, on average, are getting paid roughly</p> <p>16 their marginal revenue product, it's very</p> <p>17 possible that could happen.</p> <p>18 It's also a concept or it's a</p> <p>19 scenario that's very hard to test, very hard</p> <p>20 to test empirically because economists</p> <p>21 haven't identified a satisfactory way to</p> <p>22 directly measure marginal revenue product in</p> <p>23 most cases, most industries.</p> <p>24 Q. Now, you said that there might be a</p> <p>25 difference between what the worker gets paid</p>
<p style="text-align: right;">Page 79</p> <p>1 A. Zimbalist - Confidential</p> <p>2 Are we holding all else constant?</p> <p>3 Q. All else constant.</p> <p>4 A. That sounds right.</p> <p>5 Q. And the collective marginal revenue</p> <p>6 product of labor for my workers as a whole is</p> <p>7 \$30, is that right?</p> <p>8 A. Yes.</p> <p>9 Q. That's not how the real world</p> <p>10 works, right, there are lots of other</p> <p>11 complicating factors?</p> <p>12 MR. CRAMER: Objection to form.</p> <p>13 A. I believe so.</p> <p>14 Q. And it's fair to say that most</p> <p>15 industries are not perfectly competitive, is</p> <p>16 that true?</p> <p>17 A. Yes.</p> <p>18 Q. So most, in the scenario I gave, in</p> <p>19 the real world, workers generally wouldn't be</p> <p>20 getting all of the MRP, is that right?</p> <p>21 A. So to make sure I'm understanding</p> <p>22 you, you are saying that in the real world,</p> <p>23 the economist's model of a perfectly</p> <p>24 competitive industry doesn't usually obtain,</p> <p>25 sometimes it does, but usually it doesn't,</p>	<p style="text-align: right;">Page 81</p> <p>1 A. Zimbalist - Confidential</p> <p>2 and the worker's marginal revenue product</p> <p>3 that would be attributable to some modicum of</p> <p>4 monopsony power, is that right?</p> <p>5 A. It's possible, yes.</p> <p>6 Q. Are there other explanations for</p> <p>7 why a worker might not get paid MRP, other</p> <p>8 than the exercise of monopsony power?</p> <p>9 A. Yes.</p> <p>10 Q. Can you give me an example?</p> <p>11 A. You can have a repressive State</p> <p>12 Government that outlaws collective</p> <p>13 bargaining, outlaws minimum wages, outlaws</p> <p>14 other provisions for protecting the workforce</p> <p>15 and that would be an outcome where you don't</p> <p>16 get full payment of marginal revenue product.</p> <p>17 There have been some studies in the</p> <p>18 economics literature that find that the</p> <p>19 reduction in the level of unionization can</p> <p>20 contribute to workers being paid below their</p> <p>21 marginal revenue product.</p> <p>22 Q. When you have a union, if it</p> <p>23 represents all of the workers, is the union</p> <p>24 obtaining a competitive salary or is it</p> <p>25 obtaining a salary that's based off of the</p>

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<p style="text-align: right;">Page 82</p> <p>1 A. Zimbalist - Confidential</p> <p>2 exercise of monopoly power?</p> <p>3 MR. CRAMER: Objection to form,</p> <p>4 incomplete hypothetical.</p> <p>5 Q. All else being equal.</p> <p>6 MR. CRAMER: Same objection.</p> <p>7 A. I think unionization, you often</p> <p>8 model that in terms of bilateral monopolies,</p> <p>9 bargaining power on both sides of the fence.</p> <p>10 You are asking me that unions who</p> <p>11 -- so we are talking about union shops which</p> <p>12 we don't always have because there are right</p> <p>13 to work laws, too. You are talking about</p> <p>14 union shops that represent all of the</p> <p>15 workers, that is it possible that a union has</p> <p>16 so much power that they will force the wage</p> <p>17 rate above the marginal revenue product, is</p> <p>18 that what you are asking me?</p> <p>19 Q. I'm asking if they're powerful</p> <p>20 enough that they exercise market power in the</p> <p>21 price that they set for labor?</p> <p>22 MR. CRAMER: Objection to form,</p> <p>23 incomplete hypothetical.</p> <p>24 A. So market power is defined in terms</p> <p>25 of affecting the price for your service and</p>	<p style="text-align: right;">Page 84</p> <p>1 A. Zimbalist - Confidential</p> <p>2 make an error and for a time period before</p> <p>3 they went out of business, do that, yes, it's</p> <p>4 possible.</p> <p>5 Q. Is it possible that unions could</p> <p>6 obtain a wage rate that's above the marginal</p> <p>7 revenue product for some members of the</p> <p>8 union?</p> <p>9 MR. CRAMER: Objection to form,</p> <p>10 incomplete hypothetical.</p> <p>11 A. You are asking me if it's possible,</p> <p>12 not if it's sustainable, but if it's possible</p> <p>13 for that to happen for a period of time, yes,</p> <p>14 is that what you are asking me?</p> <p>15 Q. Yes.</p> <p>16 A. Yes, it's possible.</p> <p>17 Q. Have you, in your own work,</p> <p>18 encountered a situation where you have seen</p> <p>19 that?</p> <p>20 A. I did some estimates on the</p> <p>21 marginal revenue product and salary paid to</p> <p>22 major league baseball players looking at</p> <p>23 three different categories of major league</p> <p>24 baseball players. I did that in the early</p> <p>25 1990s and my recollection is that looking at</p>
<p style="text-align: right;">Page 83</p> <p>1 A. Zimbalist - Confidential</p> <p>2 the unions have the ability to do that, the</p> <p>3 answer is yes.</p> <p>4 Q. So, for instance, if a union can</p> <p>5 call a strike and stop work for all workers</p> <p>6 for an employer, that would give the union</p> <p>7 the ability to exercise market power, is that</p> <p>8 right?</p> <p>9 MR. CRAMER: Objection to form,</p> <p>10 incomplete hypothetical.</p> <p>11 A. Unions could, presumably use a</p> <p>12 variety of tactics to ensure that the wage</p> <p>13 rate was closer to the marginal revenue</p> <p>14 product and striking is one potential tactic</p> <p>15 they could use.</p> <p>16 Q. Could they ensure that the wage</p> <p>17 rate was greater than the marginal revenue</p> <p>18 product?</p> <p>19 MR. CRAMER: Objection to form,</p> <p>20 incomplete hypothetical.</p> <p>21 A. I think that companies would be in</p> <p>22 deep trouble if they followed a practice of</p> <p>23 paying workers more than their marginal</p> <p>24 revenue product.</p> <p>25 Is it possible that a company can</p>	<p style="text-align: right;">Page 85</p> <p>1 A. Zimbalist - Confidential</p> <p>2 free agents, that at least there was some</p> <p>3 evidence for some years that they were paid</p> <p>4 above their marginal revenue product. That's</p> <p>5 my recollection.</p> <p>6 Q. But I think you said companies</p> <p>7 would be in trouble if they paid all of their</p> <p>8 workers more than the marginal revenue</p> <p>9 product.</p> <p>10 Why is that?</p> <p>11 A. Well, what would happen in that</p> <p>12 case, and assuming the other factors of</p> <p>13 production were receiving a fair compensation</p> <p>14 for their contribution is that the company</p> <p>15 would lose money.</p> <p>16 Q. But that's not what you observed in</p> <p>17 major league baseball, is that right? You</p> <p>18 didn't observe all workers making more or all</p> <p>19 athletes making more than their marginal</p> <p>20 revenue product, correct?</p> <p>21 A. Correct. Arbitration eligible</p> <p>22 players were paid somewhat below their</p> <p>23 marginal revenue product if I recall</p> <p>24 correctly and prearbitration players</p> <p>25 basically, basically players still under</p>

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<p style="text-align: right;">Page 182</p> <p>1 2 3 DEPOSITION SUPPORT INDEX 4 5 Direction to Witness Not to Answer 6 Page Line Page Line Page Line None 7 8 Request for Production of Documents 9 Page Line Page Line Page Line None 10 11 Stipulations 12 Page Line Page Line Page Line None 13 Questions Marked 14 Page Line Page Line Page Line None 15 16 To Be Filled In 17 Page Line Page Line Page Line None 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 184</p> <p>1 2 ACKNOWLEDGMENT OF DEPONENT 3 4 I, , do hereby 5 certify that I have read the foregoing pages, 6 and that the same is a correct transcription 7 of the answers given by me to the questions 8 therein propounded, except for the 9 corrections or changes in form or substance, 10 if any, noted in the attached Errata Sheet. 11 12 ANDREW ZIMBALIST DATE 13 14 Subscribed and sworn 15 to before me this 16 day of , 2018. 17 My commission expires: 18 19 Notary Public 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 183</p> <p>1 2 CERTIFICATE 3 4 I HEREBY CERTIFY that the witness, 5 ANDREW ZIMBALIST, was duly sworn by me and 6 that the deposition is a true record of the 7 testimony given by the witness. 8 9 Leslie Fagin, 10 Registered Professional Reporter 11 Dated: January 26, 2018 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.)</p>	<p style="text-align: right;">Page 185</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">----- E R R A T A ----- PAGE LINE CHANGE</p>